

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08-00224-02-CR-W-HFS
)	
JAVIER ALEJANDRO RIOS-CARREON,)	
)	
Defendant.)	

ORDER

Pursuant to my order of June 11 (Doc. 136) the report and recommendation will be adopted and the motion to suppress will be denied, except for statements made after the signing of a Miranda warning. Those statements will be suppressed because the record shows that no effective Miranda warning was given. The agent's conclusory statement to the contrary is not supported by the evidence. The officers do not claim to have read or explained the warning to the defendant (1st. Tr. 42,21. They may have supposed he was reading the report and then signed it. He was in a mood to cooperate and signed papers he was given. There is undisputed testimony, however, that he cannot read (2nd. Tr. 5,9,12,21,24). Whatever he may know or may have thought, no adequate administration of a Miranda warning occurred.

It is true I am taking defendant's word for it that he cannot read. Even if his credibility is dubious, as Judge Maughmer properly found, that does not signify that nothing he says is true. It is inherently unlikely that a witness who can read will claim under oath - after consulting with counsel - to be illiterate. This can be tested and punished if fabricated. If the denial was questionable, there should have been some demonstration of incredibility. While no bad faith by the officers is inferred,

they were apparently too casual in processing the paper work. It was necessary that someone closely observe defendant to be sure he was reading the document before signing it, which the record does not show occurred.

The motion to suppress (ECF doc. 99) is therefore DENIED, except regarding statements and admissions dependent upon a Miranda warning. Evidence of such statements and admissions, referred to as item 3 of Doc. 99, will be suppressed.

It is SO ORDERED

/s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

July 2, 2009

Kansas City, Missouri